



RICHARD J. CODEY
Acting Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
New Jersey State Board of Physical Therapy Examiners
124 Halsey Street, 6th Floor, Newark, NJ 07102



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By Certified and Regular Mail

March 7, 2005

Jerry Masanque, P.T.
11 Rock Run Road
East Windsor, New Jersey 08520

Re: Offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Mr. Masanque:

This letter is to advise you that the New Jersey State Board of Physical Therapy Examiners (the "Board") has had an opportunity to review information concerning the physical therapy practice and the treatment that was rendered at the New Jersey Center for Physical Therapy located in Asbury Park and South Plainfield, New Jersey for which you were employed as a physical therapist from March, 2001 to March, 2003 by Frank Shenko, P.T. In addition to the patient forms used at the facility the Board also relied upon your testimony at the inquiry that you attended Pro Se on December 9, 2003.

Specifically, the documentation reviewed by the Board alleged that the majority of the patients who received treatment at New Jersey Center for Physical Therapy received primarily biofeedback and the patient record is devoid of any other physical therapy treatment to the patient. You testified that most of the patients that you saw at this facility received biofeedback solely as their physical therapy treatment. Upon further review of the billing and the treatment records you were asked whether you were familiar with the fees that were charged at the facility. Your response was that biofeedback was billed at between "\$110 and \$120". However, you expressed a lack of understanding of the billing for a patient who received chiropractic treatment on the same day as the patient received physical therapy treatment. (T13:14-25) You also said that if you performed other physical therapy services you did not note it on the patient record as the facility only billed for biofeedback. Upon further questioning you testified that the patient record had "three sections after assessment and goals, one for self-care home management, one for orthotic check and one for muscular re-education" and that these three sections were part of the initial evaluation. However, you were aware that this facility was billing separately for the three sections instead of including these sections in the price of the initial evaluation (T36 and T37:1-16). Thus, the charges represented unbundling for billing purposes.

Upon review of all available information and your testimony at the inquiry, the Board has preliminarily found that probable cause exists to support a finding that you violated N.J.S.A. 45:1-21(h) and N.J.A.C. 13:39A-3.6(a) in that you failed to be aware of the fees and the billing procedures that were charged by this facility. Furthermore, all licensees, as part of their professional obligations are responsible for reviewing fees and for being aware of the charges for physical therapy services.

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of disciplinary proceedings, should you consent to:

1. Cease and desist in the future from failing to be aware of the fees charged for physical therapy treatment at the facility where you are employed.

2. Pay a penalty in the amount of \$1500.00 for the violation of N.J.A.C. 13:39A-3.4 which arose from your failure to be aware of fees and billing procedures at your place of employment. The amount of the penalty is to be paid immediately upon your signing of the acknowledgment at the bottom of this letter by sending a certified check or money order payable to the Board of Physical Therapy Examiners, P.O. Box 45014, Newark, New Jersey 07101 to attention of Susan Gartland, Executive Director.

3. Pay costs in the amount of \$296.50 as reflected in the certification of Susan Gartland, Executive Director of the Board as attached hereto. (To be paid immediately upon signing the acknowledgment by following the mailing instructions as set forth in paragraph 2 above.

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of appropriate enforcement action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order, requiring you to reimburse certain monies and/or requiring you to pay costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General, Carmen A. Rodriguez who may be reached at (973) 648-3696.

If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response

from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate enforcement proceedings.

NEW JERSEY STATE BOARD OF
PHYSICAL THERAPY EXAMINERS

By: Susan Gartland
Susan Gartland
Executive Director

ACKNOWLEDGMENT: I, Jerry Masanque, P.T., hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of \$ 1500.00 plus costs in the amount of \$296.50 which totals \$1796.50(to be paid upon signing of this acknowledgment).

Jerry Masanque, P.T.

Dated:

cc: Carmen A. Rodriguez, Deputy Attorney General

- Undersigned will not be able to make immediate payment on penalty/fee costs of \$ 1796.50 due to personal financial reasons but agrees to send in \$ 300.- a month until full payment is made.
- Undersigned will not admit to any wrongdoing regarding physical therapy patient care/practices
- Undersigned will continue to be well aware of New Jersey fee schedule for Physical Therapy services.

Signed

JERRY MASANQUE, PT